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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/612,094

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Isaac Weiser

03-11987

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09/11/2006

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SUITE 900

SANTA MONICA, CA 90401-1211

EXAMINER

GARCIA, ERNESTO

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/612,094 | <b>Applicant(s)</b><br>WEISER ET AL. |  |
|                              | <b>Examiner</b><br>Ernesto Garcia    | <b>Art Unit</b><br>3679              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 12-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-7 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 21, 2006 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Restriction***

Claims 1-3 and 12-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicants timely traversed the restriction (election) requirement in the reply filed on November 1, 2004.

***Claim Objections***

Claims 4 and 10 are objected to because of the following informalities:

regarding claims 4 and 10, --further-- should be inserted after "post" in claim 4, line 17, and claim 10, line 17.

***Claim Rejections - 35 USC § 112***

Claims 4-7 and 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 4, the recitation "a coil spring" in line 15 asserts a double inclusion of the coil spring already recited in line 6.

Regarding claim 10, the recitation "detached novelty portions" implies that the body, the one or more appendages, and the connecting structures are detached from each other. However, since the appendage has a coil spring extending therefrom than how can the appendage or appendages be detached from the connecting structures when the post, which is part of the connecting structure, is inserted into the coil spring as recited in lines 16-17? Further, the recitation "the post" in line 16 lacks antecedent basis in the claim.

Regarding claims 5-7 and 9, the claims depend from claim 4 and therefore are indefinite.

Regarding claim 11, the claim depends from claim 10 and therefore is indefinite.

***Claim Rejections - 35 USC § 103***

Claims 4 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higdon, 5,375,363, in view of Moore et al., 5,716,161, and Del Mas, 2,760,303.

Regarding claim 4, Higdon discloses, in Figures 5, 6, and 10, a body **12**, an appendage **16**, and a connecting structure **354**. The body **12** has apertures **366** (Fig. 10), **A1** (see Figure 6 in the marked-up attachment provided in the Office action mailed on 2/2/2006). The appendage **16** corresponds to one of the apertures **366**. The appendage **16** includes at least one flexible connecting member **30**. The connecting member **30** comprises a coil spring. The connecting structure **354** comprises a post **354** (see marked-up attachment; Figure 5) having a first end, a middle portion, and a second end. Prongs **364** (Fig. 10) are flexibly coupled to the first end of the post. The prongs **364** extend toward the body **12**. One end of the flexible connecting member **30** is connected to the connecting structure **354** and another end of the connecting member **30** is connected to the appendage **16**. The coil spring further comprises an L-

Art Unit: 3679

shaped configuration (note that the coil spring takes different configurations while it is being moved; see Figure 8). The post further comprising a barrier **56** (see Figure 3). The post **354** is coaxially inserted into a first end of the coil spring **30**. However, Higdon fails to disclose the prongs **364** extending away from the post and toward a second end of the post.

Moore et al. teach in Figure 5 prongs that extend away from a post **40** and toward a second end of the post **40** to manually install a connecting structure to apertures and quickly remove the connecting structure from the apertures without using tools (col. 1, lines 33-40). Therefore, as taught by Moore et al. , it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the prongs of Higdon with the prongs of Moore et al. to manually install the connecting structure of Higdon to the apertures and quickly remove the connecting structure of Higdon from the apertures without using tools.

Regarding claim 9, the connecting member **30** has a spring constant that allows the appendage **16** to be freely movable with respect to the body responsive to wind.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higdon, 5,375,363, in view of Moore et al., 5,716,161, and Del Mas, 2,760,303, as applied to claims 4 and 9, and further in view of Polk, 2,729,022.

Regarding claim 5, Higdon, as discussed, fails to disclose the one appendage comprising a wing structure. Polk teaches an appendage comprising a wing structure to make a decoy to impart life-like movement of a bird. Therefore, as taught by Polk et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the one appendage comprise a wing structure to make the goose of Higdon life-like.

Regarding claim 6, Higdon, as modified, discloses the connecting structure **354** includes a second end **56** to connect to the appendage **16**.

Regarding claim 7, Higdon, as modified, discloses the appendage **16** comprises an enclosure **48** configured to secure to the second end **56** of the connecting structure **354**.

#### ***Allowable Subject Matter***

Claims 10 and 11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 10, the prior art of record does not disclose or suggest a kit comprising detached portions comprising connecting structures and one or more appendages such that the appendages includes at least one flexible connecting member comprising a coil spring comprising an L-shaped configuration. The closest prior art, Higdon, 5,375,363, will teach a kit with detached portions comprising one connecting structure and one appendage. Although it would be obvious to include a second connecting structure as a replacement part, the appendage will comprise a coil spring comprising a straight configuration. Further, there is no motivation, absent applicant's own disclosure, to modify Higdon because there no requirement to make the coil spring L-shaped.

### ***Response to Arguments***

Applicants' arguments with respect to claims 4-7 and 9 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-282-7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*E.S.*

E.G.

September 1, 2006



**DANIEL P. STODOLA  
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